

TOWN OF BOXBOROUGH



ZONING BOARD OF APPEALS

Decision No. 2008-04

Dated: November 17, 2008

This is an application by Omnipoint Communications, Inc., a wholly owned subsidiary of T-Mobile USA, Inc. ("T-Mobile"), for a Special Permit pursuant to Section 7400 & 9203, and 9204 of the Boxborough Zoning By-Law to install, operate and maintain a wireless telecommunications facility, including a 100 foot monopole, antennas, coaxial cables and radio communications equipment, at the property located at 235 Summer Road, Boxborough, Massachusetts. Brian S. Grossman, Esq. of Prince, Lobel, Glovsky & Tye, LLP represented T-Mobile in connection with the application.

Bell Atlantic Mobile Communication, Ltd., d/b/a Verizon Wireless ("Verizon Wireless"), holds a ground lease at the location of the proposed wireless telecommunications facility and, as owner of the proposed tower and a future co-locator on the proposed monopole, Verizon Wireless is a co-applicant for the relief being sought by T-Mobile in its application. Karl P. Baker, Esq. of Robinson & Cole LLP represents Verizon Wireless in connection with the submitted application.

After causing notice of the time and place of its public hearing and of the subject matter thereof to be published, posted and mailed as required by law, Christian Habersaat, Chairman of the Board of Appeals, called the hearing to order at 7:30 p.m. on Tuesday, August 5, 2008. The hearing was continued and subsequently closed on Tuesday, August 19, 2008. Board of Appeals Members Christian Habersaat, Thomas Gorman, Lonnie Weil and Michael Toups were present throughout the proceedings as was Alternate Member Karen Warner.

The following exhibits were submitted for the Board's consideration and deliberation:

Exhibit A: Application, including Supporting Statement, FCC License, RF Affidavit and Propagation Maps, Letter of Authorization and Telecommunications Facility Plans ("Application").

Exhibit B: Letter dated August 18, 2008 from Robinson & Cole LLP on behalf of Verizon Wireless in support of the co-application for the zoning relief requested in the Application.

Exhibit C: Notice of Lease by and between Joule Power, Inc. and Crown Atlantic Company, LLC, dated August 28, 2001.

Exhibit D: Assignment and Assumption Agreement between Crown Atlantic Company, LLC and Celco Partnership, a Delaware general partnership d/b/a Verizon Wireless, dated September 30, 2002.

Exhibit E: TOWAIR FAA Determination Results dated August 18, 2008.

Exhibit F: Aviation Systems, Inc. Airspace Obstruction Report dated June 6, 2001.

Exhibit G: Photographs from December 15, 2001 balloon test site visit of Board of Appeals in connection with ZBA Decision Nos. 2001-13 and 2002-02.

Exhibit H: Board of Health Agent letter dated July 29, 2008

The Board met to deliberate on the proceedings on November 17, 2008. After due consideration of the Application, the record of the proceedings and the exhibits, the Board makes the following findings of fact:

FINDINGS OF FACT:

1. The subject property, 235 Summer Road, Boxborough, Massachusetts, is owed by Jabez LLC, and is shown on Assessor's Map 10, Block 4, Lot 292 ("Property").
2. The Property is subject to a Lease and Assignment and an Assumption Agreement. Pursuant to those agreements, Verizon Wireless holds a ground lease and has been authorized by the Property owner to apply for the zoning relief sought in the Application in order to build the proposed wireless telecommunications facility.
3. T-Mobile entered into a sublease with Verizon Wireless pursuant to which T-Mobile proposes to construct the proposed wireless telecommunications facility and pursuant to which Verizon will be the owner of the proposed wireless telecommunications facility and would be subject to any maintenance or removal obligations associated with the proposed facility.
4. The Property is located in the Wireless Communications Overlay Zoning District, an underlying Industrial-Commercial Zoning District and is partially within the Aquifer Protection Overlay District. Under Zoning Bylaw Section 4003(3) footnote 17 and

Section 7403 the use of the Property for a wireless telecommunications facility is permitted by special permit.

5. T-Mobile and Verizon Wireless request a special permit under Zoning Bylaw Section 7004(s) to utilize a lot with more than 20% impervious surface within the Aquifer Protection Overlay District.
6. T-Mobile and Verizon Wireless are licensed by the Federal Communications Commission to construct and operate a wireless telecommunications network in markets throughout the United States.
7. T-Mobile seeks to install, operate, and maintain on the Property a wireless communications facility consisting of a 100' monopole and three (3) wireless telecommunications antennas installed within the monopole mounted at a centerline height of 77 feet. T-Mobile's radio equipment will be located in a 6' high chain link fenced-in compound located at the base of monopole and will be connected to the antennas by appurtenant coaxial cable. The proposed monopole is designed to allow co-location of additional wireless communications providers, and the approved plans may be modified to show an additional internal carrier slot for that purpose.
8. Verizon Wireless seeks to co-locate up to at total of six (6) wireless telecommunications antennas installed within the monopole mounted with three antennas mounted at a centerline height of 87 feet and three antennas mounted at a centerline height of 97 feet. Verizon's radio equipment will be located within the 6' high chain link fenced-in compound located at the base of monopole and will be connected to the antennas by appurtenant coaxial cable.
9. The proposed facility is a personal wireless services facility within the meaning of the Federal Telecommunications Act, 42 U.S.C. Section 332(c)(7)(C)(ii), and a wireless communications facility under the Buxborough Zoning Bylaw, Section 4003(3), fn. 17.
10. The proposed wireless telecommunications facility is shown on the plans attached to the Applicant's application as Exhibit 5 ("Proposed Plans"). As shown on the Proposed Plans, the proposed wireless telecommunications facility is similar to the wireless communications facility that was approved by the Zoning Board of Appeals in its Decision Nos. 2001-13, 2002-02. The construction of that facility by Verizon Wireless lapsed prior to the exercise of the rights granted under that special permit.
11. T-Mobile has performed a study of radio frequency coverage for the Town of Buxborough and from the Property, the results of which are shown on coverage maps

submitted with the application as Exhibit 4. T-Mobile has submitted radio frequency propagation maps, which show its current coverage and the gap in coverage that the proposed site will fill; and a radio frequency propagation map showing anticipated coverage from the Property.

12. In connection with Board of Appeals Decision Nos. 2001-13, 2002-02, Verizon Wireless performed a study of radio frequency coverage for the Town of Boxborough and from the Property and submitted coverage maps depicting the gap in coverage and the coverage from the proposed facility. At the hearing, representatives from Verizon Wireless verified that the gap in coverage for this location still remains.

13. T-Mobile and Verizon Wireless have determined that a telecommunications facility will provide adequate coverage to the targeted sections of the Town of Boxborough and the immediate surrounding area if its antennas are located at the requested height of 77 feet for T-Mobile and 87 and 97 feet for Verizon Wireless.

14. T-Mobile and Verizon Wireless have represented that the proposed wireless telecommunications facility will comply in all respects with all federal, state and local regulations concerning radio frequency emissions.

15. A site visit and balloon test was conducted in connection with Board of Appeals Decision Nos. 2001-13, 2002-02. Photographs depicting the balloon test that was conducted in 2006 were reviewed and considered by the Board in connection with this Application and are made part of the record of this application.

CONCLUSIONS:

The Board concludes that ample reasons justifying the zoning relief sought by T-Mobile and Verizon Wireless were articulated at the hearing and are set forth in detail in the Application in support of the request for a Special Permit. In particular, the Board concludes that the Application, which concerns a wireless telecommunication facility that was previously approved by the Board, satisfies the criteria for the grant of a Special Permit for a wireless communications facility set forth in sections 7400 and 9203 through 9208 of the Bylaws.

The Board also concludes that the construction of the facility is consistent with Section 7000 of the Bylaw because the proposed wireless facility will have no impact on groundwater quality and the plans includes the provision for groundwater recharge with the gravel base and small stormwater storage area.

The Board further concludes that any adverse effect that the proposed wireless telecommunications facility may have on the neighborhood does not outweigh the benefits on the Town and the community at large, in view of the particular characteristics of the site and of the proposal in relation to the site.

Therefore, after due consideration of the foregoing and the exhibits presented at the hearing the Board of Appeals on November 17, 2008 voted **unanimously** to grant the requested Special Permit subject to the following **conditions**:

1. **Prior to the issuance of any building permit**, T-Mobile shall provide the Board of Health Agent a plan depicting all sewage disposal system components relative to the existing building and proposed facility. The plan shall depict how the system(s) will be protected during construction.
2. **Prior to any construction of the wireless facility**, T-Mobile shall obtain all necessary building permits and approvals from the Inspector of Building.
3. **Prior to any construction of the wireless facility**, T-Mobile shall install to the satisfaction of the Board of Health Agent protection measures around the existing sewage disposal system and monitoring wells.
4. **Prior to any co-location of antennas**, Verizon shall obtain all necessary building permits and approvals from the Inspector of Buildings.
5. **Prior to the issuance of a final certificate of occupancy**, all landscaping shown on the approved Plan shall be installed. The Town Planner shall verify that all plantings shown on the approved plan have been installed. Any minor modification or substitutions shall be reviewed and approved by the Town Planner. However, if the applicant provides documentation to the Board that it would be detrimental to plant prior to occupancy due to weather conditions, then a bond covering the cost of such work shall be submitted to and approved by the Board and a temporary certificate of occupancy shall be issued until all landscaping is installed.
6. The wireless facility must comply in all regards with Zoning Bylaw sections 9203 through 9208, which sections are incorporated herein by reference.
7. The wireless telecommunications facility shall be constructed in the manner as depicted on the Proposed Plans. Specifically, the monopole shall be limited to one hundred (100') feet in height and no more than three (3) interior mounted antennas for T-Mobile and a total of six (6) interior mounted antennas in two locations for Verizon Wireless. The wireless facility shall be constructed in the area depicted on the Proposed Plans, which general area was the subject of a balloon test on September 5, 2006.

8. T-Mobile and/or Verizon Wireless shall remove all structures associated with the wireless telecommunications facility at their expense within one (1) year of cessation of use.

9. The wireless telecommunications facility is not to be lit or illuminated, except for necessary security lighting in which case such lighting shall be limited to low level security lighting installed at or near ground level. No lighting will be placed at the top of the monopole unless later required by the FAA or the Massachusetts Aeronautics Commission.

10. All utilities servicing the wireless telecommunications facility shall be located underground.

11. A fence to control unauthorized access to the wireless telecommunications facility shall be placed around the facility. The height of the fence is not to exceed six (6) feet and the fence shall be appropriately landscaped and screened from public view.

12. A sign no greater than one (1) square foot will be provided identifying a 24-hour contact number to the operator in charge of maintaining the wireless telecommunications facility.

13. The wireless telecommunications facility shall comply in all respects with all federal, state and local regulation concerning radio frequency emissions. The wireless telecommunications facility will satisfy the radio frequency signal regulations adopted by the Massachusetts Department of Public Health. Use of the Property shall comply with all Federal Communications Commission requirements regarding the confinement of electromagnetic emissions geographically, including prevention interference with broadcast radio and television services, licensed public service and commercial communications.

14. Any change or modification to the plans submitted as part of the decision shall require the approval of the Board of Appeals.

The foregoing restrictions and conditions have been spelled out for the purpose of emphasizing their importance and are not intended to be all-inclusive or to negate the remainder of the Boxborough Zoning Bylaw.

The Board shall have the power to modify or amend the terms and conditions of this Special Permit on the application of the owner or applicant or upon its own motion. All the provisions of this paragraph applicable to approval shall, where apt, be applicable to such modification or amendment.

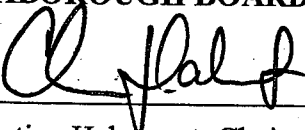
This Special Permit shall not be valid until recorded with the Middlesex South District Registry of Deeds and evidence of such recording provided to the Inspector of Buildings.

This Special Permit will expire on November 17, 2010, if a substantial use thereof has not commenced except for good cause. Any further request for extension of time set forth herein must be made in writing to the Board of Appeals at least thirty (30) days prior to November 17, 2010, and the Board herein reserves the right and power to grant or deny such extension without a public hearing. The Board shall not grant any extension of said permit unless it finds the use of the property in question or construction on the site has begun and is proceeding in a timely manner except for good cause.

Appeals, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws, Chapter 40A and shall be filed within twenty (20) days after the date of filing of the above referenced decision with the Town Clerk.

Witness our hands this 17th day of November 2008.

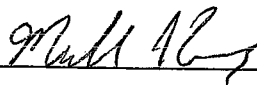
BOXBOROUGH BOARD OF APPEALS:



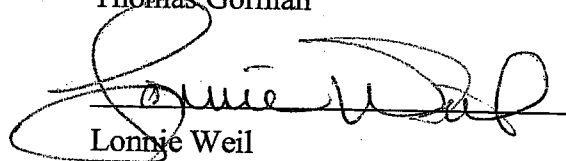
Christian Habersaat, Chairman



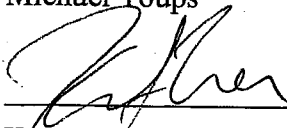
Thomas Gorman



Michael Toups

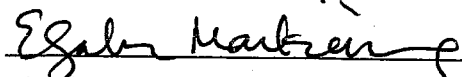


Lonnie Weil



Karen Warner

I, Elizabeth Markiewicz, hereby do certify that this is a true copy of the above Board of Appeals Decision 2008-04 filed on November 18, 2008.



Elizabeth Markiewicz, Town Clerk

TO WHOM IT MAY CONCERN:

I, hereby certify that the twenty (20) day appeal period on this decision has expired, and no appeals have been filed with this office.

Elizabeth Markiewicz, Town Clerk

Date: _____